

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: SHACKLEE, Franky Lee
Serial No.: 09/900,808
Filed: July 6, 2001
Group No.: 3727
Examiner: S. J. Castellano
Title: AMMUNITION SHIPPING AND STORAGE
CONTAINER AND METHOD

Assistant Commissioner
for Patents
BOARD OF PATENT APPEALS
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PATENT APPLICATION
09/900,808

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#141 Appeal
Brief
11/26/02

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APPEAL BRIEF

A timely Notice of Appeal was filed on August 28, 2002, in order to initiate an appeal from the action of the Primary Examiner in finally rejecting Claims 24-26, and 28-37 in the Office Action mailed July 11, 2002. This Appeal Brief is being filed pursuant to the provisions of 37 C.F.R. §1.192. A separate transmittal letter serves to transmit this Appeal Brief in triplicate, and serves to transmit a check in the amount of \$320.00 (Fee Code 120) under 37 C.F.R. §§1.192(a) and 1.17(c) to cover the large entity fee for filing this Appeal Brief.

REAL PARTY IN INTEREST

The present application is a Continuation of a parent application (U.S. Serial No. 09/224,218 filed December 30, 1998, issued as U.S. Patent 6,290,087B1 on September 18, 2001). The assignee of record of the present application is Raytheon Company, by virtue of:

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1. an Assignment recorded in the assignment records of the U.S. Patent and Trademark Office on February 22, 1999 at Reel 9806, Frame 0248, which transferred the parent application (and any continuing applications) from the inventors to Raytheon Company.

RELATED APPEALS AND INTERFERENCES

Applicants believe that there are no known appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal. However, an appeal is being filed approximately concurrently herewith regarding U.S. Serial No. 09/900,209 ("the '209 Application"). The '209 Application and the present application claim priority to the same parent application (U.S. Patent No. 6,290,087).

STATUS OF CLAIMS

Claims 24-26, and 28-37 stand finally rejected, pursuant to an Office Action mailed July 11, 2002. Claim 27 stands objected to by the Examiner as being dependent upon a rejected base claim, but is acknowledged by the Examiner to contain allowable subject matter. Applicant respectfully requests that the objection of Claim 27 be held in abeyance pending the outcome of this Appeal. Claims 24-26, and 28-37 are all presented for appeal.

STATUS OF AMENDMENTS

Appellant filed no amendments after the Final Office Action mailed July 11, 2002.

SUMMARY OF INVENTION

A container includes a storage vessel coupled with a removable end cap at one end. *See* page 7, lines 2-17; FIGURES 1-3, and 9. A first flange extends from the exterior surface of the vessel and a second flange extends from the exterior surface of the end cap. *See* page 8, lines 12-24; FIGURES 2-3. A stacking lug having a cylindrical opening is operable to receive the storage vessel therein, and provides for the stacking of multiple containers upon one another. *See* page 12, line 20 through page 13, line 33; FIGURES 6-8, and 10. Backing rings may be provided adjacent the first flange and/or the second flange, in

order to reinforce the coupling formed between the first flange and the second flange. *See* page 9, lines 14-25; FIGURES 2-4.

ISSUES

1. Whether, under 35 U.S.C. § 102(b), Claims 24, and 30-37 are unpatentable over U.S. Patent No. 4,785,930, to Fischer, et al. ("*Fischer*").

2. Whether, under 35 U.S.C. § 103(a), Claims 25 and 26 are unpatentable over *Fischer*, in view of U.S. Patent No. 3,599,826 to Rocher ("*Rocher*").

3. Whether, under 35 U.S.C. § 103(a), Claim 28 is unpatentable over *Fischer*, in view of U.S. Patent No. 4,733,773 to LaBianca, et al. ("*LaBianca*").

4. Whether, under 35 U.S.C. § 103(a), Claim 29 is unpatentable over *Fischer* in view of *LaBianca* and U.S. Patent No. 4,660,733 to Snyder, et al. ("*Snyder*").

GROUPING OF CLAIMS

Appellants hereby request that Claims 24-26, and 28-37 not be grouped to stand or fall together. Instead, with respect to the issues identified in the immediately preceding Section of this Appeal Brief, pursuant to 37 C.F.R. § 1.92(c)(7), Appellants request that the following claims be grouped together for purposes of this Appeal. Appellants have provided an explanation of why such groups are separately patentable in the Argument section below.

1. Group 1: Claims 24 and 28-37 may be deemed to stand or fall together for purposes of this Appeal.

2. Group 2: Claims 25 and 26 may be deemed to stand or fall together for purposes of this Appeal.

ARGUMENT

1. Claims 24 and 30-37 are patentable over Fischer, under 35 U.S.C. § 102(b).

Under 35 U.S.C. § 102, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); MPEP 2131. In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim." *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); MPEP 2131 (emphasis added). "Distilling an invention down to the 'gist' or 'thrust' of an invention disregards the requirement of analyzing the subject matter 'as a whole'." *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 U.S.P.Q. 303 (Fed. Cir. 1983, *cert. denied*, 469 U.S. 851 (1984)); MPEP 2141.02.

Independent Claim 24 is patentable over *Fischer*, because *Fischer* does not disclose, teach, or suggest each element of the claim. Claim 24 includes a storage vessel having "a first flange extending from an outer surface of the storage vessel, the first flange being sized to cooperate with a corresponding second flange extending from an exterior surface of the end cap." *Fischer* does not disclose, teach, or suggest each of these limitations.

In the final Office Action mailed July 11, 2002 ("Office Action"), the Examiner contends that "*Fischer* discloses . . . a first flange (the portion of the part containing the stacking surfaces 3 and 4 which has a planar surface which extends parallel to the plane of the access opening . . .) extending from an outer surface of the storage vessel." The Examiner contends further that the first flange is "sized to cooperate with a corresponding second flange (the portion of anchor plate) (16), which has a planar surface and extends parallel to the open end of the end cap (6) and has hooks (19) thereon) extending from an exterior surface of the end cap" However, Applicants respectfully contend that *Fisher* does not disclose a flange, nor does it disclose a flange being sized to cooperate with a corresponding second flange.

As an initial matter, the Examiner misinterprets the term "flange" as it is used in Claim 24. Words in a claim are generally given their ordinary and customary meaning. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). Moreover, a dictionary is not prohibit extrinsic evidence, and is an available resource for claim construction. *Vanguard Product Corp. v. Parker Hannifin Corp.*, 234 F.3d 1370, 1372 (Fed. Cir. 2000). The ordinary meaning of "flange", as defined in The American Heritage College Dictionary (3rd Ed., page 517),¹ is "a protruding rim, edge, rib or collar, as on a pipe shaft, used to strengthen an object, hold it in place, or attach it to another object." This definition is entirely consistent with Applicant's use of the term "flange" in Claim 24, and in the specification. For example, flanges 44 and 52 of FIGURE 2 and 3 protrude from hollow tube 32 and removable end cap 36, respectively, and are used to attach hollow tube 32 and end cap 36, using a lever clamp assembly.

Fischer, does not disclose, teach or suggest a flange extending from an outer surface of a storage vessel. The surfaces referred to by the Examiner are not "flanges" as those terms are understood by those of ordinary skill in the art, and do not qualify under any dictionary definition for flange. Any part which simply "extends parallel to the plane of" an object is not necessarily a "flange" as that term is known to one of ordinary skill in the relevant art.

Claim 24 defines a first flange extending from an outer surface of the storage vessel, the first flange being sized to cooperate with a corresponding second flange extending from an exterior surface of the end cap. *Fischer* does not disclose, teach or suggest each of these limitations. For at least the reasons discussed above, Claim 24 is patentably distinguishable from *Fischer*.

Claims 30-37 depend from independent Claim 24. Therefore, Applicant respectfully contends that Claims 30-37 are patentably distinguishable from *Fischer*, for example, for the same reasons discussed above with regard to Claim 24.

¹ Attached is a copy of the cover, copyright information, and page 517 of The American Heritage Dictionary.

2. Claims 25 and 26 are patentable over Fischer, in view of Rocher.

In order to establish a *prima facie* case of obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). As discussed above, *Fischer* does not disclose, teach, or suggest a flange extending from an outer surface of the storage vessel, the flange being sized to cooperate with a corresponding second flange extending from an exterior surface of an end cap, as required by Claim 24.

Furthermore, Claim 25 includes the limitation "a first backing ring having an opening configured to receive the storage vessel therethrough, the backing ring contacting a side of the first flange opposite the access opening, and being operable to provide support to the first flange." Neither *Fischer* nor *Rocher*, alone or in combination, disclose, teach, or suggest each of these limitations. The Examiner contends that "*Rocher* teaches backing ring (19) which backs the first flange (profiled ring 12) on the storage vessel (11) and also backs the second flange (that part which incorporates incline face (22), sealing rib (26) and everything that extends outwardly of these two elements including an annular edge part (23), and hook part (24), but not including the backing ring (19)), on the end cap (16)." However, *Rocher* does not disclose a first flange, nor a second flange. Profiled ring 12 of Figures 1-3 of *Rocher* is not a flange, as that term is understood by those of ordinary skill in the relevant art, nor does profiled ring 12 qualify as a flange under any dictionary definition. Moreover, "that part which incorporates inclined face (22), sealing rib (26), and everything that extends outwardly of these two elements including annular edge part (23) and hooked part (24), but not including the backing ring (19)), on the end cap (16)," does not qualify as a flange according to the dictionary definition or as the term flange is understood by those of ordinary skill in the relevant art. Furthermore, backing ring (19) does not provide support to either of these components, as required by Claim 25.

Claim 26 includes all of the limitations of Claim 24, and further includes "a first backing ring having an opening configured to receive the end cap therethrough, the first backing ring contacting a side of the second flange opposite the storage vessel and being operable to provide support to the first flange." As described above with regard to Claim 25,

Rocher does not disclose a first flange, a second flange, nor a backing ring contacting a side of the second flange opposite the storage vessel, and being operable to provide support of the first flange. For at least the reasons discussed above, Applicant respectfully contends that Claims 25 and 26 are patentably distinguishable from *Fischer* in view of *Rocher*.

3. Claim 28 is patentable over Fischer, in view of LaBianca.

In order to establish a *prima facie* case of obviousness of a claimed invention, **all** claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). As discussed above, *Fischer* does not disclose, teach, or suggest a flange or second flange, as required by Claim 28, which incorporates all of the limitations of Claim 24. Nor does *LaBianca*. Therefore, Applicant respectfully contends that Claim 28 is patentably distinguishable from *Fischer* in view of *LaBianca*, for example, for the same reasons discussed above with regard to Claim 24.

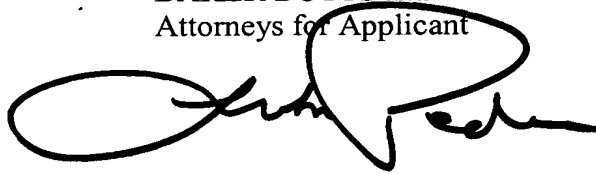
4. Claim 29 is patentable over Fischer, in view of LaBianca and Snyder.

In order to establish a *prima facie* case of obviousness of a claimed invention, **all** claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). As discussed above, *Fischer* does not disclose, teach, or suggest a first flange, or a second flange. Applicant respectfully contends that *LaBianca* and *Snyder* also fail to disclose a first flange or a second flange. Since Claim 29 depends from Claim 24, Applicant contends that Claim 29 is patentably distinguishable from *Fischer* in view of *LaBianca* and *Snyder*, for example for the same reasons discussed above with regard to Claim 24.

CONCLUSION

For the reasons given in the foregoing discussion, it is respectfully submitted that the rejection of each of Claims 24-26 and 28-37 is erroneous, and reversal of the rejection of each of these claims is respectfully requested.

Respectfully submitted,
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A handwritten signature in black ink, appearing to read 'Luke K. Pedersen', written over the printed name and firm name.

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Date: October 25, 2002

Enclosure:

Appendix A – Claims on Appeal
Cover page, copyright page, and page 517 of The American Heritage Dictionary
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APPENDIX A – CLAIMS ON APPEAL

24. A container, comprising:
a storage vessel with an interior compartment, and an access opening at one end;
a removable end cap releasably and mechanically coupled to the storage vessel and operable to close the access opening;
a first flange extending from an outer surface of the storage vessel, the first flange being sized to cooperate with a corresponding second flange extending from an exterior surface of the end cap; and
a generally rectangular first stacking lug having a generally cylindrical, tubular interior diameter operable to receive the storage vessel therein.

25. The container of Claim 24, further comprising a first backing ring having an opening configured to receive the storage vessel therethrough, the backing ring contacting a side of the first flange opposite the access opening and being operable to provide support to the first flange.

26. The container of Claim 24, further comprising a first backing ring having an opening configured to receive the end cap therethrough, the first backing ring contacting a side of the second flange opposite the storage vessel and being operable to provide support to the first flange.

27. **(Not Presented for Appeal)** The container of Claim 25, further comprising a second backing ring having an opening configured to receive the end cap therethrough, the second backing ring contacting a side of the second flange opposite the storage vessel and being operable to provide support to the first flange.

28. The container of Claim 24, wherein the storage vessel is formed from extruded, high-density polyethylene.

29. The container of Claim 24, wherein the stacking lug is formed from rotationally molded, cross-linked, high density polyethylene.

30. The container of Claim 24, further comprising a manual pressure relief valve operable to create a path of fluid communication between the interior compartment and ambient environment.

31. The container of Claim 24, wherein the first stacking lug comprises:
a housing with an opening disposed therethrough, the housing having a first face and a second face opposite the first face; and
a first protrusion on the first face of the housing.

32. The container of Claim 31, further comprising a cavity on the second face adapted to receive a second protrusion of similar size and configuration as the first protrusion, to form a releasable nested fit between the second protrusion and the cavity.

33. The container of Claim 31, wherein the first face is adapted to cooperate with a third face of a separate component of similar size and configuration as the container, such that force from the weight of the separate component is transferred from the third face to the first face when the component is stacked upon the container.

34. The container of Claim 24, wherein the storage vessel and removable end cap are operable to form a pressure vessel.

35. The container of Claim 24, wherein the interior compartment is adapted to receive a round of ammunition therein.

36. The container of Claim 24, further comprising a lever clamp assembly being operable to couple the end cap and the storage vessel.

37. The container of Claim 24 wherein the stacking lug is permanently affixed to the storage vessel.

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